IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 33411 of 2006(C)

PETITIONERS:

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1. NELSON MATHEW,
ALUMMUTTATHU VEEDU, MANJADI P.O., THIRUVALLA.

2. A.P.ABRAHAM,
ALUMMUTTOM HOUSE, MEENTHALAKKARA, THIRUVALLA.

BY ADV. SRI.JACOB CHACKO

RESPONDENTS:

1.THE SECRETARY,
THIRUVALLA MUNICIPALITY, THIRUVALLA.

2.UNNI ABRAHAM,
MANNARAM CHIRAYIL, MANJADI P.O., THIRUVALLA.

*ADDL.R3.THE SENIOR ENVIRONMENTAL ENGINEER,
POLLUTION CONTROL BOARD, PATHANAMTHITTA.

*ADDL.R3 IS IMPLEADED SUO MOTU AS PER THE ORDER DATED 8.3.07.

R1 BY ADV. SRI.S.SUBHASH CHAND
R2 BY ADV.SRI.SAJITH KUMAR V.
SMT.G.R.LEKSHMI
R3 BY ADV.MR.M.K.CHANDRAMOHAN DAS, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.33411 of 2006

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Dated: 8th March, 2007

JUDGMENT

Mr.Jacob Chacko, counsel for the petitioners submits that the rice mill which was being conducted in the building owned by the 2nd petitioner having door No.3/260 is the only source of their livelihood. According to him, they will be able to convince the 1st respondent-Municipality that the building has become structurally stable and does not offend the building rules in any manner any longer. Counsel further submitted that the petitioners will be able to obtain consent from the Pollution Control Board in the matter of allegations of pollution which have been raised by the 2nd respondent in this case. Counsel requested that the Municipality be directed to take a fresh decision once the petitioners convince the Municipality that the building is structurally stable and does not offend the building rules and that they have consent from the Pollution Control Board.

2. Learned counsel for the party respondent opposes the prayer. I have heard the submissions of Mr.S.Subhash Chand, Standing Counsel for the 1st respondent-Municipality and Mr.V.Sajith Kumar, counsel for the 2nd respondent.

3. Having considered the rival submissions made at the bar and the documents placed on record, I am of the view that if it is possible

for the petitioners to convince the Municipality that the building is structurally stable and that the same does not violate the building rules at all and they have succeeded in getting requisite consent from the Pollution Control Board issued to them on the basis of satisfaction that all safeguards are taken for averting the possibility of sound and dust pollution, the Municipality shall reconsider the petitioners case once again so as to enable the petitioners to open the rice mill which is the only source of their livelihood. Accordingly, the Writ Petition will stand disposed of with the following directions:

The petitioners are directed to do whatever work that is necessary for making the building in question structurally stable and to be in conformity with the building rules and report the matter to the Municipality. The petitioners are also directed to file necessary application before the additional third respondent seeking consent to operate the mill. The additional third respondent will conduct necessary inspections with notice to the petitioners and the 2nd respondent and take a decision on the application submitted by the petitioners for consent. Before taking a decision on the application the additional third respondent will hear the petitioners as well as the 2nd respondent. Once decision is taken and the petitioners succeed in

getting consent, the petitioners will approach the Municipality again and the Municipality will hear the petitioners and the 2nd respondent and take a fresh decision on the petitioners application for licence. In order to compliance with the above directions, Ext.P4 is quashed. It is needless to mention that the work of re-enforcing the building so as to make it structurally stable will be taken up by the petitioners only after obtaining requisite permission from the Municipality. The petitioners and the respondents are directed to ensure compliance with the directions hereinabove without causing undue delay in the matter. It is made clear that so long as fresh licence is issued, Ext.P4 will operate in the matter of functioning of the mill.

srd **PIUS C.KURIAKOSE, JUDGE**